IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5288 OF 2004.

Smt. Kamlabai w/o Goverdhan Barbate .... PETITIONER.

....Versus....

1. The State of Maharashtra, through Secretary, Cooperative Department & others. .... RESPONDENTS.

Mr. S.D. Harode, Advocate for petitioner.
Mrs. N.S. Jog, A.G.P. for respondents 1 & 2.
Mr. A.M. Quazi, Advocate for respondent no.3.

CORAM : A.P. LAVANDE & R.V. MORE, JJ.

DATED : JULY 24, 2007.

O R D E R (PER R.V. MORE, J.)

The petitioner by filing this petition under Articles 226 & 227 of the Constitution of India challenges the recovery certificate dated 12.6.2003 granted by respondent no.2 under Section 101 of Maharashtra Cooperative Societies Act on the ground that same is void ab initio and, therefore, liable to be quashed and set aside. The petitioner also challenges consequential public auction notices dated 31.8.2003 and 11.10.2004 for attachment and sale of the property.

2. The petitioner came up with the case that she approached one Raju Jain, the proprietor of respondent no.4 for finance. He asked her to deposit the sale-deed of her house with him and promised to return her after repayment. She was forced to sign some documents allegedly required for sanctioning loan but did not give finance nor returned the original sale-deed to the petitioner. The petitioner further submitted that the respondent no.3 Bank has filed Dispute under Section 91 of the Maharashtra Cooperative Societies Act being Dispute No. 461/02 for recovery against respondent no.4 and she was made party to the dispute showing that she is a guarantor. The application made by the respondent no.3 under Section 95(4) of the Maharashtra Cooperative Societies Act for attachment of the property is pending adjudication. During pendency of this dispute, she received notice in a proceeding under Section 101 being Case No. 121/03. However, she could not remain present as per the notice in the proceeding under Section 101 of the Maharashtra Cooperative Societies Act. So far as the proceeding under Section 95(4) for attachment of property filed by respondent no.3 is concerned, she has filed the reply and that application is pending for adjudication.

3. The present petition is filed after she received notices dated

31.8.2003 and 11.10.2004 for attachment and sale of property in pursuance of recovery certificate under section 101 granted in favour of respondent no.3 by respondent no.2 on 12.6.2003.

4. The respondent no.2 by filing affidavit pointed out that revenue recovery certificate under Section 101 is issued by him against respondent no.4 and other persons who were shown as surety including the petitioner. It was also pointed out that this revenue recovery certificate is issued after following the principles of natural justice and the petitioner as well as respondent no.4 were granted ample opportunity before grant of revenue recovery certificate.

5. Having heard Mr. S.D. Harode, learned Advocate for the petitioner, Mrs. N.S. Jog, learned A.G.P. for respondents 1 & 2 and Mr. A.M. Quazi, learned Advocate for respondent no.3 and having gone through the contents of the petition and affidavit in reply filed by the respondent nos. 2 & 3, we are of the considered view that the petition must fail.

6. The contention of the petitioner that the recovery certificate under Section 101 is void ab initio on the ground that the dispute filed by

the respondent no.3 under section 91 is pending is concerned, same does not hold any merits. Mere filing of dispute for recovery against respondent no.4 being principal debtor and petitioner being guarantor will not bar subsequent proceeding under Section 101 for revenue recovery certificate. The proceedings under Section 91 as well as under Section 101 of the Cooperative Societies Act are independent proceedings and pendency of proceedings under Section 91, in our opinion, will not estop the Bank from proceeding under Section 101 of the Maharashtra Cooperative Societies Act. The respondent no.2 while issuing revenue recovery certificate had issued notices to respondent no.4 and petitioner and thereby followed principles of natural justice and, therefore, the contention of the petitioner that recovery certificate is void ab initio on the ground that the dispute under Section 91 was pending is without any merit.

7. The Writ Petition in our considered view is also not maintainable in view of the fact that the petitioner has alternative efficacious remedy under the provision of Section 154 of the Maharashtra Cooperative Societies Act. The petitioner without exhausting remedy under Section 154 of the Maharashtra Cooperative Societies Act could not have directly approached this Court by way of petition under Articles 226 & 227 of the

Constitution of India.

8. There is yet one more reason why the petition should not be entertained. The petitioner claimed that her signatures were obtained by respondent no.4 by force on some documents. The petitioner also denied that she stood guarantor to the loan obtained by respondent no. 4. The allegations of force and fraud cannot be gone into in exercise of jurisdiction under Article 226 of the Constitution of India. There is no substance in the petition. The same is, therefore, dismissed.

JUDGE. **JUDGE**.

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